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SUBJECT: ETHIOPIA: CUD TRIAL MOVES ON TO WITNESSES

11. (SBU) SUMMARY. The trial of detained opposition Coalition for Unity and Democracy (CUD) leaders, independent journalists and civil society representatives has resumed after a two-month break and quickly wrapped up the documentary stage of evidence. The bench ruled in favor of the prosecution on arguments of admissibility of the additional evidence, which may prove potentially damaging for the defense, in particular the civil society representatives and journalists. The witness stage of the trial has begun, with the prosecution presenting 10 witnesses per day toward its stated target of 300 witnesses. Witnesses so far have made some serious allegations against the CUD leadership, but without an organized defense, there is little effort to refute their sometimes shaky testimony. END SUMMARY.

12. (SBU) International observers continue to attend each session. Attorney Roger Briottet has replaced Michael Ellman as the European Union's full-time trial observer. Lawyers Without Borders continues to send Ethiopian attorney Semere Kassaye to every session, in addition to a rotation of American attorneys. Interested European embassies are maintaining a rotation of observers. Other organizations present have included BBC, ActionAid, and the International Federation of Human Rights.

DEFENDANTS HAPPY TO REGROUP, CONTINUE COMPLAINTS TO COURT

13. (SBU) At the beginning of the first session returning from summer recess, defendants warmly greeted each other upon entering the courtroom and shared conversations for several minutes before taking their seats. This was the first time many had a chance to see one another and were clearly happy to be reunited. Several defendants had health concerns and several were hospitalized during the two-month break, but only a few defendants have continued to miss trial sessions due to hospitalization. Generally speaking, they appear in good condition, despite complaints about their treatment.

4 (SBU) During the October 13 session, several defendants addressed the court regarding their treatment. The bench allowed this, but instructed defendants to limit complaints to those issues that the "bench can do something about, (as) it is impossible to give the corrections department orders." (NOTE: In a separate meeting on October 13 with the President of the High Court, Wubshet Kibru, Poloff was told that the bench's jurisdiction in this regard is not entirely clear, but generally anyone to whom the bench gives an order, must

obey - "The bench can even give the PM an order and he would have to follow." END NOTE) The bench also instructed that if defendants have specific evidence of mistreatment, they can sue the corrections department in a separate case. The bench then heard from defendants Muluneh Eyoel, Andualem Arage, Eskinder Nega, Sisay Agena, Melaku Fantaye, Mesfin Debesa, Tesfaye Ganta, Melaku Ouncha, and Mesfin Woldemariam. The complaints raised included: being kept in solitary confinement with no light (Muluneh, Andualem, Eskinder, Sisay), limited visitation rights, lack of access to medical care, and physical abuse by prison officials. In response the bench said that they &can only respond within the law - on some matters we can make a ruling, but on others we can do nothing.⁸ The bench ordered the complaints be written down and that a member of the corrections department should appear during the session scheduled for October 18 to address each one.

15. (SBU) In a response by the Deputy Manager of the Addis Ababa Prison Administration provided in court on October 18, he stated that the corrections department acts in accordance with its constitutional duty and that many organizations and representatives of the international community have visited the prison to see that all possible efforts are being made to provide adequate treatment (NOTE: Though many have been to Kaliti, since December 2005, no organization/international representative has been allowed into Kerchele where four defendants are allegedly being kept in solitary confinement. END NOTE). He went on to say that no one has been denied the right to medical attention if needed. As an example, he pointed out that Hailu Shawel has been taken to the hospital 25 times since he was imprisoned. He pointed out that the prison does not have facilities for solitary confinement and that the bench is free to assign someone to come examine for

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themselves. He also claimed that there has never been any restriction on visitors and all who carry an ID card can visit on the weekend. The bench concluded by saying they would give a ruling in the following session.

PROSECUTION ALLOWED TO PRESENT ADDITIONAL EVIDENCE

16. (SBU) The trial went on recess on August 4 as the bench was deliberating the admissibility of 9 of the 88 additional documents submitted by the prosecution. On July 31, the defense attorneys and defendants Daniel Bekele and Netsanet Demissie objected to these 9 documents that allegedly pertained to them, claiming that they are inadmissible based on a number of arguments. The prosecution countered that not only are the 9 documents that refer to the ActionAid defendants admissible, but in fact all of the 88 newly introduced documents should be considered as evidence against them. In a lengthy explanation, the prosecution countered each one of the defenses claims regarding the documentary evidence. (reftel)

17. (SBU) The first full session following the recess, the bench ruled on the additional documentary evidence. Before giving a ruling, the bench made the point that a draft evidence law exists but has not yet been signed into law, and therefore evidence was difficult to evaluate. (NOTE: Poloff later clarified with Semere of Lawyers Without Borders that in fact the draft evidence code was presented 2 years ago but has not yet been passed, and the existing code says very little about admissibility of evidence, leaving much up to interpretation by the bench.) The bench then went point by point through the defense's objection, in the end ruling that all the documents were admissible.

18. (SBU) In the prosecution's presentation of the additional evidence, it appeared that the intention was to address the issue of conspiracy. Explanations included statements such as, &this evidence is presented to show the relationship

among the conspirators for their common illegal conspiratorial goals,⁸ and this is evidence that the conspirators have forged a close bond of cooperation to overthrow the system.⁸ Another theme in this set of documentary evidence was a focus on civil society representatives, journalists and those defendants being tried in absentia. For example, in reference to the civil society members, the prosecution submitted notes and letters found in the offices of civil society representatives, as well as minutes from meetings that were held for the purpose of gathering support for CUD lead conspiracy.⁸ The prosecution accused these civil society organizations of operating under the cover of reconciliation" and "under the umbrella of the CUD (to) foster the conspiracy.⁸ A few letters from defendants being tried in absentia call for struggle against the EPRDF, and conclude saying that Hailu Shawel identified these civil society representatives as contact persons. Referring to the journalists, a number of articles and editorials written by defendant journalists (some detained in Ethiopia, some being tried in absentia) were submitted. Most of the articles were written around the time of the May 2005 election, and were very critical of the National Election Board (NEB) and allege cooperation between the EPRDF and NEB leadership to cheat the election.⁸ A few of the articles claim that the army has lost faith in the government and suggest that they join forces with the people to defend against EPRDF-led aggression.⁸ Additionally, some of the authors claim that they had information that Eritrean assassins had been brought to Addis to kill the leadership of the CUD.

300 WITNESSES TO TESTIFY; NO DISCOVERY

¶9. (SBU) On October 25, the prosecution commenced the witness stage of evidence, stating that it plans to present a total of nearly 300 witnesses. Despite multiple objections by the defense, the bench ruled that the names of the witnesses will not be revealed in advance. This requires defense attorneys (or defendants) to cross examine immediately after witnesses are questioned by the prosecution with no "discovery" period to prepare. The bench has instructed the prosecution to

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present 10 witnesses per session.

¶10. (SBU) As of November 2, the court had heard three sessions of witness testimony. Each session, the prosecution presents the group of witnesses around one or two themes and the lead prosecutor begins with a summary of the testimony, what charges it supports, and to which defendants it applies. Testimony has mentioned a number of defendants, but it has been primarily concentrated on the leadership of the CUD, including Hailu Shawel, Berhanu Nega, Birtukan Mideksa, and Muluneh Eyoel.

¶11. (SBU) On October 25, witnesses testified that they assisted in serving search warrants of defendants, homes and offices, confirming that they found specific documentary evidence. Other defendants testified that they attended CUD rallies at which flyers were handed out (also submitted in documentary evidence). The only cross examination that took place was by defendant Gizachew Shiferaw, who reacted to one witness, claiming to be a neighborhood merchant. Gizachew challenged this, saying that the man works for the security detail of PM Meles, and that he had seen him during visits to the PM's office.

¶12. (SBU) On October 27, most witnesses were farmers from a region in western Ethiopia and testified that some of the mid-level CUD defendants were organizing meetings in their villages. During these meetings, the defendants reportedly said that the CUD won the May 2005 election, called for armed struggle and instructed farmers to use their axes and machetes⁸ against security forces. One witness from the

town of Bahir Dar testified that that several of the top CUD leadership recruited him into the CUD and instructed him to &organize violent means of struggle8 in response to the election results and to form a group of &armed bandits8 in his city. He said that he subsequently formed this group and that he was paid a stipend by the CUD for his work. He said he was also motivated because the CUD told him after the EPRDF won the election, the Tigray region would move to secede from Ethiopia. Defendant Mamushet Amare, in cross examination, told the court that the witness is currently the chief of police in Bahir Dar and such organization would be illegal. The witness admitted that he once was the chief of police, but that he has since been fired, and that he met the &bandits8 when they were in jail.

¶13. (SBU) On October 31, the witnesses brought forth claimed to be organizers and party members of the CUD in Addis Ababa. Several reported that they had attended public meetings organized by the top leadership of the CUD, in which the leaders asked attendees whether or not they should join the parliament. These meetings allegedly concluded with instructions from the defendants that participants should &stand by and await a call from the (CUD) leadership.8 Other witnesses testified that in meetings with the CUD leadership, they were given a 13-page document that outlined an 8-point strategy of civil disobedience. This included calls to: honk car horns during upcoming AU summit, not to listen to government radio, not shop at EPRDF-run businesses, and participation in a stay-at-home strike. Meeting participants were asked to relay this call for action to residents of their woreda. They also recalled that the defendants told them that these actions would likely lead to arrests and that participants should &defend themselves.8 No defendant offered any cross-examination.

COMMENT: TRIAL MOVES ON, (LACK OF) DEFENSE CONTINUES

¶14. (SBU) The final documentation presented by the prosecution contained some material that, if found to be legitimate, might be considered damaging to some of the civil society representatives and journalists. The ActionAid defendants objected to this documentation on a number of grounds, but the bench decided that it will ultimately make the determination on relevance of the evidence. The witness stage has highlighted more than ever that the defendants would benefit from having legal representation and an organized defense strategy, even if there is no preparation time allowed by the court. The witnesses, testimony has varied in its degree of seeming incrimination, but the defendants have only responded in cross-examination when

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exceptionally incensed, and have sought to discredit very little of their claims. In the end, as with the video and documentary evidence, without hearing from both sides, the bench may have little option but to rule for the prosecution.
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